

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK**

In re:

PRIME CAPITAL VENTURES, LLC,

Alleged Debtor.

Invol. Chapter 7

Case No. 23-11302 (REL)

DECLARATION OF KRIS ROGLIERI

Kris Roglieri, pursuant to 28 U.S.C. § 1746, declares as follows:

1. I am the CEO at the Alleged Debtor Prime Capital Ventures, LLC (“Prime Capital”). I founded Prime Capital in 2021 and I am familiar with its operations.

2. This declaration is based on my personal knowledge, a review of the books and records of Prime Capital, and my discussions with other Prime Capital employees and representatives.

3. I submit this declaration in support of Prime Capital’s motion for the posting of a bond by the Petitioning Creditors (the “Petitioners”) in connection the petition for involuntary bankruptcy filed in this case (the “Petition”).

I. Overview of Prime Capital’s Business

4. Prime Capital was formed in 2021 to originate and fund large development, commercial development and commercial real estate transactions. Over the last two years, Prime Capital has operated a successful business with a total of 38 loan transactions in an aggregate amount of over a \$1 billion. Prime Capital employs a staff of 26 employees.

5. Prime Capital’s business is to provide borrowers with access to an asset-backed line of credit (the “LOC”). Borrowers enter into a Development Line of Credit Agreement (“LOC Agreement”). Under the LOC Agreement, borrowers receive tranches of payments from Prime

Capital at various milestones of the project (known as “Advances”), up to a maximum amount. In exchange, the borrowers pay Prime Capital a nonrefundable “LOC Fee” (deducted from the initial Advance) as well as interest payments on the outstanding principal balance of the Advances. The interest payments are paid out of an Interest Credit Account (“ICA”) that is established immediately after execution of the LOC Agreement.

6. Annexed hereto as **Exhibit A** is a true and correct copy of the Development Line of Credit Agreement between Prime Capital and 526 Murfreesboro LLC dated as of April 6, 2023 (the “Murfreesboro Agreement”).

7. I will use the Murfreesboro Agreement as an example. It describes the ICA and related funds in the Recitals (Paragraph C) and body of the agreement (Section 3.6) as follows:

C. Within twenty-four (24) hours after the fully executed Loan Documents are received by Lender and Borrower, Borrower has agreed to pay to Lender, pursuant to Section 3.6 hereof, the aggregate amount of FOUR MILLION THREE HUNDRED TWELVE THOUSAND FIVE HUNDRED and 00/100 Dollars (\$4,312,500.00) (the “ICA Payment”), by bank wire to Lender. An account on the books and records of Lender shall be created to serve as an Interest Credit Account (the “Interest Credit Account” or “ICA”). A credit equal to the ICA Payment shall be noted in the ICA for purposes of satisfying interest payments under the Loan.

Section 3.6. Reserves. Following the signing of this Agreement, Borrower shall remit the ICA Payment in accordance with the terms and time period set forth in Recital C. Upon the funding of the First Advance, the ICA Payment shall remain part of the Interest Credit Account and subject to the provisions of this Agreement, and not refundable to Borrower unless otherwise specifically provided for in this Agreement. All credits to the Interest Credit Account shall be used, absent the occurrence of an Event of Default, for purposes of payment on interest payable on the Advances as and when such interest payments are due and payable. Upon Borrower’s exit and payoff of the LOC, absent the occurrence of an Event of Default, if there is a remaining balance in the ICA, the excess amount shall be applied to the unpaid principal balance outstanding under the Promissory Note or, if it exceeds such unpaid principal, refunded to Borrower.

Ex. A (emphasis added).

8. Thus, the LOC Agreement does not require that the ICA funds be held in segregated bank accounts. Instead, it is sufficient that Prime Capital account for the ICA Payment on its books and records, and has the ability to repay the ICA Payment, if necessary.

II. Other Agreements for Petitioners' Transactions

9. Annexed hereto as **Exhibit B** is a true and correct copy of the Development Line of Credit Agreement between Prime Capital and Compass-Charlotte 1031, LLC dated as of April 26, 2023.

10. Annexed hereto as **Exhibit C** is a true and correct copy of the Development Line of Credit Agreement between Prime Capital and Newlight Technologies, Inc. dated as of May 26, 2023.

III. Information Relating to Bond Amount

11. I understand from counsel that the amount of the bond to be posted by Petitioner is related to the (1) costs and attorneys' fees; (2) compensatory damages; and (3) punitive damages that the Court could award Prime Capital if the Petition is dismissed. Prime Capital's counsel has informed me that their estimate of the costs and attorneys' fees for defending against the Petition are in the range of \$750,000 to \$1 million. I will defer to them on that amount as well as the amount of potentially available punitive damages.

12. Instead, I have focused on coming up with an estimate of compensatory damages. I understand that compensatory damages relate to the harm that Prime Capital has suffered as a result of the wrongful filing of the Petition. We reserve the right to amend or supplement the figures for compensatory damages at a later date, especially since the situation is fluid and the harm to Prime Capital increases with each passing day.

13. As explained above, Prime Capital receives an LOC fee on all loan transactions. I estimate that, as a result of the Petition, Prime Capital has lost approximately \$35 million in LOC fees. This does not include any damages that Prime Capital might suffer from any suits or other actions taken against it because of its inability (due to the involuntary bankruptcy) to fund transactions that were in progress at the time of the Petition.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 7, 2024

DocuSigned by:

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Kris Roglieri